



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

IN THE MATTER OF THE BOARD OF PUBLIC)
UTILITIES VS. NEW CENTURY TELECOM, INC)
IMPLEMENTING N.J.A.C. 14:10-11:1 ET SEQ.)
14:10-11:1 ET SEQ. – ADMINISTRATIVE)
INVESTIGATION INTO ALLEGED SLAMMING)
VIOLATIONS)

Customer Assistance

CONSENT ORDER

DOCKET NO: TC05090837S

(Service List Attached)

BY THE BOARD:

WHEREAS, this matter was commenced by the New Jersey Board of Public Utilities ("Board" or "BPU") as an administrative investigation into allegations of violations by New Century Telecom, Inc. ("New Century"), a public utility doing business in the State of New Jersey, of the New Jersey Public Utilities Laws, N.J.S.A. 48:2-1 et seq. ("the Public Utilities Laws") and the regulations adopted pursuant to the Public Utilities Laws, and the anti-slamming provisions of the New Jersey Consumer Fraud Act at N.J.S.A. 56:8-86 through 8-91 ("the Act") and regulations adopted pursuant to the Act; and

WHEREAS, an investigation was initiated by Board staff during the year 2003 in response to sixty-three (63) complaints of violations of N.J.A.C. 14:10-11.1 et seq. (also referred to as "slamming complaints"), and staff made findings of one hundred and twenty-six violations (126) of N.J.A.C. 14:10-11.1 et seq. The parties have engaged in discussions and have exchanged information regarding this matter; and

WHEREAS, the parties desire to resolve this matter without resort to litigation and without any admission of liability or fault by or on the part of New Century;

NOW THEREFORE, and in consideration of the terms and conditions herein, on the date set forth below, the parties HEREBY STIPULATE AND AGREE that:

1. As used in this Order, "New Century" shall mean New Century Telecom, Inc. and any of its principals, directors, officers, parent corporations, subsidiaries, affiliates, shareholders, employees, representatives, agents, assigns, successors, independent contractors/third party distributors, any trustee in bankruptcy or other trustee, and/or any receiver appointed pursuant to proceedings in law or equity.

2. By executing and entering into this Consent Order, New Century admits no wrongdoing or liability for any allegations made or implied by the BPU in the investigation, and this Consent Order does not constitute any evidence, admission or finding of wrong doing or liability.

3. This Consent Order shall fully resolve all slamming complaints against New Century that were received by the Bureau of Investigation on or before February 3, 2005, concerning the switching of a customer's telephone service without a valid authorization and (2) the failure to provide the Board staff with a separate authorization for the switch of each telephone service sold to a customer within thirty (30) days of its request. A list of sixty-three (63) slamming complaints that are resolved by this Consent Order is attached as Exhibit "A".

4. New Century shall comply with all effective and applicable New Jersey statutes, laws and regulations as adopted or amended regarding telecommunication service providers, including, but not limited to, the Act at N.J.S.A. 56:8-86 through 8-91, the Public Utilities Laws, N.J.S.A. 48:2-1 et seq. and N.J.A.C. 14:10-11.1 et seq. New Century shall require compliance with such laws and regulations by its employees, agents, representatives and independent contractors engaged in marketing to customers in New Jersey.

5. New Century agrees that it shall no longer use telemarketing to sell its telecommunications' services to New Jersey residents beginning January 11, 2005. New Century also agrees that for one (1) year after execution of this agreement, it shall not market its telecommunications services to New Jersey residents utilizing, including, but not limited to, telemarketing, door-to-door sales, direct mail, print (newspapers, magazines), radio or television. If New Century resumes marketing of its services in any form at any time after March 1, 2007, New Century agrees to notify the Board at least sixty (60) days before beginning such marketing and to implement the following:

5.1 If New Century uses a third party verifier to verify a customer's carrier change to New Century, New Century shall:

- a. Retain a qualified independent third party verifier in accordance with N.J.A.C. 14:10-11.3(b)(3).
- b. Ensure that the third party verifier obtains, at a minimum, the customer's identity; confirms that the person on the call is authorized to make the carrier change; confirms that the person on the call wishes to make the carrier change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved. N.J.A.C. 14:10-11.3(b)(3)(iii).
- c. Modify the Third Party Verification (TPV) script used by the independent verifier to ensure that each customer selection of a carrier for each telecommunications service sold to that customer is verified separately, even if the same carrier is chosen to provide two or more telecommunications services, as required by N.J.A.C. 14:10-11.3(d).
- d. Provide a copy of the TPV script to the Board for review to ensure compliance with these regulations thirty (30) days prior to resuming any telemarketing of its services in New Jersey.

- e. Ensure that all third party verifications are conducted in the same language that was used in the underlying sales transaction and that they are recorded in their entirety. N.J.A.C. 14:10-11.3(b)(3)(iv).
- f. In accordance with N.J.A.C. 14:10-11.5(d)1i, maintain and preserve audio recordings of verification of a customer's authorization for a minimum of three (3) years after obtaining such verification.

5.2. Provide the Board with a valid proof of its authorization to switch a complainant's telephone service to New Century and a valid proof for each service sold to complainant within thirty (30) days of any slamming allegation received by the BPU.

5.3. Within thirty (30) days of execution of this Consent Order, New Century shall provide the BPU with an acknowledgement that each current New Century employee with direct responsibility for sales or marketing in the State of New Jersey as well as any employees involved in the sales and marketing of New Century's telecommunications services and the TPV process are aware of the requirements set forth in or has received a copy of this Consent Order. New Century shall have a continuing obligation to ensure that all future New Century employees with direct responsibility for sales or marketing in the State of New Jersey are familiar with the requirements set forth in this Consent Order and the applicable laws, rules and regulations. New Century shall train its staff regarding the requirements and applicable laws, rules and regulations.

6. Within thirty (30) days of the execution of this Consent Order, New Century shall provide the BPU with the name, title, telephone number and address of the senior management-level corporate official designated by New Century to assume responsibility for the proper implementation of and full compliance with this Consent Order. Any change in the designation of that corporate official shall be provided in writing to the BPU within ten (10) days of the change.

7. In the interest of resolving the issues raised in the investigation and in settlement of this matter, New Century agrees to pay the sum of Twelve Thousand Five Hundred 00/100 Dollars (\$12, 500.00) on or before March 31, 2006. If New Century is unable to make the one-time payment of Twelve Thousand Five Hundred 00/100 Dollars (\$12,500.00) on or before March 31, 2006, New Century shall notify the Board by March 15, 2006. In this case, New Century shall pay the sum of Fifteen Thousand 00/100 Dollars (\$15,000.00), to be made in two equal installments of Seven Thousand Five Hundred 00/100 Dollars (\$7,500.00). The first installment shall be due on or before March 31, 2006, and the second shall be due on or before April 30, 2006. Payments shall be made payable to "Treasurer, State of New Jersey" and delivered to the following address:

Kristi Izzo, Secretary
Board of Public Utilities
2 Gateway Center, 8th Floor
Newark, New Jersey 07102

8. If, after signing this Consent Order, New Century engages in any acts or practices that constitute a violation of this Order or of the laws and regulations cited herein, New Century may be subject to the imposition of enhanced penalties under N.J.S.A. 56:8-13.

9. New Century shall not represent or imply that any business practice or other practice used or engaged in by New Century has been required or approved, in whole or in part, by the State of New Jersey or any of the State's agencies, agents or subdivisions, with the exception of the practices expressly required by this Consent Order.

10. The parties agree that New Jersey law shall govern the terms of this Consent Order.

11. This Consent Order constitutes the entire agreement between the parties and shall bind the parties and their respective officers, directors, agents, representatives, employees, parent corporations, subsidiaries, affiliates, successors and assigns. It is further understood and agreed that nothing contained in this Consent Order shall be construed to limit or affect the rights of any persons or entities who are not parties to this agreement, including any state agencies.

12. Nothing contained in this Consent Order shall limit or affect any position that the parties may take in any future or pending litigation.

13. The parties represent that a representative of each has signed this Consent Order with the authority to legally bind the respective party, and that each party has full knowledge, understanding and acceptance of the terms of this Consent Order.

14. In the event this Consent Order is not approved by the Board or New Century in its entirety and without modification, the agreement is null and void, and no party shall have waived its litigation rights.

15. Any and all notices shall be sent to:

- a. Kristi Izzo, Secretary of the Board
Board of Public Utilities
2 Gateway Center, 8th Floor
Newark, New Jersey 07102
- b. Kent Papsun, Director
Division of Customer Assistance
Board of Public Utilities
2 Gateway Center, 13th Floor
Newark, New Jersey 07102
- c. Charles Helein, Esq.
The Helein Law Group, LLP
8180 Greensboro Drive
Mc Lean, Virginia 22101

16. The agreement may not be amended except by written instrument executed by each party and approved by the Board.

17. This Consent Order may be signed in counterparts, each of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties.

18. If any provision of this Consent Order shall be invalid or unenforceable, the remainder of the Consent Order shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

DATED

NEW CENTURY TELECOM, INC

By: Karen Burt

DATED 3/22/06

BOARD OF PUBLIC UTILITIES

By:

Jeanne M. Fox
JEANNE M. FOX
PRESIDENT

Frederick F. Butler
FREDERICK F. BUTLER
COMMISSIONER

Connie O. Hughes
CONNIE O. HUGHES
COMMISSIONER

Joseph L. Fiordaliso
JOSEPH L. FIORDALISO
COMMISSIONER

Christine V. Bator
CHRISTINE V. BATOR
COMMISSIONER

ATTEST:

Kristi Izzo
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities

Kristi Izzo

I/M/O the Board of Public Utilities vs. New Century Communications Corporation – Implementing
N.J.A.C. 14:10-11.1 et seq. – Administrative Investigation Into Alleged Slamming Violations
BPU Docket. No. TC05080715S

SERVICE LIST

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Exhibit A

CA# 764
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Exhibit A Cont.

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